IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24188 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOLIKABEN WD/O JAGADISHBHAI DURGAPRASAD TRIVEDI - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :

MS BANNA S DUTTA for Petitioner(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 24/01/2006

ORAL JUDGMENT

1. The petitioner detenu has filed this habeas corpus petition under Article 226 of the Constitution of India for quashing and setting aside the order of detention dated 14.10.05 passed by the Commissioner of

Police, Surat city, respondent No. 1 herein and further be pleased to ask the respondent to release the petitioner detenu from the detention forthwith.

2. Now when the matter was placed for hearing before this Court on 19.12.05 the Court has issued Rule returnable on 28th December, 2005. On behalf of the respondent Mr. Pujari learned APP appears on behalf of all the respondents and he has also filed affidavit on behalf of the respondent. In view of the same, with the consent of the parties the matter is taken up for hearing.

3. Ms. Banna Dutta learned advocate has invited my attention to the order of detention dated 14.10.05 by which the petitioner has been detained under section 2 (b) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as " the PASA Act" for convenience).

4. The learned advocate has also invited my attention to the order dated 14.10.05 by which the petitioner was sent to Sabarmati Jail on the same day. The learned advocate further stated and invited my

attention to the grounds supplied by the authority to the petitioner in this behalf also on the same day i.e 14.10.05 from the grounds which has been furnished by authority which reveals that the petitioner has committed certain offence under Randar Police station under Bombay Prohibition Act. There are six offences registered against the detenu before the Rander city police station.

5. The first offence was registered at Rander Police station in connection with CR NO. 987/2004 for the offence punishable under section 66 (1) B, 65 E of the Bombay Prohibition Act on 31.12.04 wherein the petitioner is storing 25 lts of country liquor valued at Rs 500/-

6. The second offence was registered at Rander police station in connection with CR NO. 243/2005 for the offence punishable under section 66 (1) B, 65 E of the Bombay Prohibition Act dated 25.3.05 wherein the petitioner is storing 8 lts of country liquor valued at Rs 160/-

7. The third offence was registered at Rander police station in connection with CR NO. 264/2005 for

the offence punishable under section 66 (1) B, 65 E – of the Bombay Prohibition Act on 13.4.05 wherein the petitioner is storing 11 lts of country liquor valued at Rs 220/-.

8. The fourth offence was registered at Rander police station in connection with CR NO. 287/2005 for the offence punishable under section 66 (1) B, 65 E – of the Bombay Prohibition Act on 1.5.05 wherein the petitioner is storing 26 lts of country liquor valued at Rs 720/-.

9. The fifth offence was registered at Rander police station in connection with CR NO. 356/2005 for the offence punishable under section 66 (1) B, 65 E – of the Bombay Prohibition Act on 22.5.05 wherein the petitioner is storing 220 lts of country liquor valued at Rs 440/-.

10. The sixth offence was registered at Rander police station in connection with CR NO. 752/2005 for the offence punishable under section 66 (1) B, 65 E – of the Bombay Prohibition Act on 16.9.05 wherein the petitioner is storing 16 lts of country liquor valued

at Rs 320/-.

11. The learned counsel submitted that even if all the incident taken together there may be violation of law and order but no violation of public order and therefore the authority has not properly satisfied to detain the petitioner under the Prohibition of PASA Act in support of the aforesaid contention. The learned counsel has relied upon the judgement of the Apex Court in the case of **Piyush Kantilal V. Commissioner of Police , Ahmedabad city & another AIR 1989 SC 491** and the Division Bench judgement of this Court in **Ashok Jivraj @ Jivabhai Solanki Vs Police Commissioner , Surat & Ors reported in 2000 (1) GLH 393** .

12. On the other hand Mr Pujari relied upon the authority in this incident. He has stated that the authority has collected as many as 6 incident and though the first incident is of 31.12.04 but the last incident is on 16.9.05 and the order dated 14.10.05 and therefore taken into consideration all these incident together. The authority has relied upon the incident which live to be occassioned and the incident

taken on 31.12.04 cannot be called a stale incident in this behalf on 25th March or 13 February in support of the same the learned counsel has relied upon **(2005) 3 Supreme Court Cases 666 Collector & District Magistrate , W.G District, Eluru , A.P and Ors.** Particularly para 10 " In other words, the material produced by the authority proposing the detention should form a chain of incidents last of which will have to be proximate to the date of proposed detention while other acts must be proximate to each other. Thus if, the facts placed before the detaining authority are proximate to each other and the last of the facts mentioned is proximate to the order of detention then the early incidents cannot be treated as stale and detention order cannot be set aside.

13. In view of the same the petitioner's contention that the detention order can be set aside only on the ground that the incident dated 31st December and 25th March is stale the order dated 14.10.05 is rejected.

14. However the contention of the petitioner is that

there may be violation of law and order and there is no violation of public order that argument will have to be accepted in view of the judgement of the Apex Court in the case of **Piyush Kantilal V. Commissioner of Police , Ahmedabad city & another AIR 1989 SC 491.** I have considered the judgement of the Apex Court in Piyush Kantilal judgement of this Court. After considering the same I have considered the view that the criminal case registered under Bombay Prohibition Act cannot be said to be sufficient enough to arrive at the subjective satisfaction to the fact that the activity of the petitioner detenu is prejudicial to the public order merely because the petitioner is dealing in the country liquor that by itself is not an activity prejudicial to public order because the same can be effective under prohibition of ordinary criminal law.

15. Having heard the submissions of the parties and perused the record of the case, I am of the view that only registeration of criminal cases along cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the

PASA Act is not based on simple facts about registeration of crimes or the activities of theft of the detenu. There has to be nexus and link for such activities with disturbance of the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities even affect tempo of normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgement and order dated Piyush Kantilal and Ashok Jivraj supra considered that the activities of the detenu are prejudicial to public health or public order therefore the order of detention dated 14.10.05 passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

16. Having heard learned counsel for the parties and perused the record, in my opinion, the detaining authority has passed the order of detention without there being any credible or cogent material about the detenu preferring bail application or his likelihood of getting enlarged on bail and

subsequently continuing and indulging into such prejudicial, anti social and criminal activities again.

17. I have gone through the said judgements and orders and I am of the view that petition is allowed. The order of detention dated 14.10.05 is quashed and set aside. The detenu, Kokilaben wd/o Jagdishbhai Durgaprasad Trivedi is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost.

18. Direct service is permitted.

(K.M.MEHTA, J)

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